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June 4, 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

HAND DELIVER

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Dear Ms. Searcy:

On behalf of Capital Cities/ABC, Inc., transmitted herewith for filing with the Commission are an original and five copies of its Opposition to Cablevision Petition for Reconsideration in MM Docket No. 92-259.

If there are any questions in connection with the foregoing, please contact the undersigned.

Sincerely,

Kristin C. Gerlach

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

JUN 7 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of the Cable
Television Consumer Protection
and Competition Act of 1992

MM Docket No. 92-259

OPPOSITION TO CABLEVISION PETITION FOR RECONSIDERATION

By CAPITAL CITIES/ABC, INC.

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Counsel for Capital Cities/ABC, Inc.

June 4, 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Implementation of the Cable

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MM Docket No. 92-259

consent and network non-duplication rights.¹

Cablevision raises nothing new in its Petition -- its arguments have been fully presented in various pleadings and rejected by the Commission. Although the Commission has rejected those arguments both in the context of the pleading cycle in this proceeding and a Petition for Rulemaking to Revise the Network Non-duplication Rules filed by NCTA, Cablevision persists in an effort to re-argue the case.² Its effort should be rejected.

Cablevision's primary argument is that exercise of network non-duplication rights will give broadcasters "unfair bargaining leverage" and will "harm consumers."³ As numerous parties have pointed out, this is simply not the case. To

¹ This Opposition also responds to the National Cable Television Association's ("NCTA") argument that "stations not electing must carry status should not be allowed to assert blackout rights." Petition of the National Cable Television Association for Reconsideration in MM Docket No. 92-259 (filed May 3, 1993) at pp. 20-22.

² The Commission rejected the arguments of Commenters in the Cable Act proceeding that the network non-duplication rules should not apply to stations electing retransmission rights with respect to a cable system, and denied NCTA's Petition for Rulemaking on the same subject. In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, MM Docket No. 92-259 (released March 29, 1993) ("Report and Order") at paragraph 180.

³ Cablevision Petition at p. 3. Cablevision also argues that network non-duplication protection was intended as a substitute, not a supplement, for retransmission consent, when it was adopted in 1965. The essence of its argument, however, is a perceived competitive imbalance -- that network affiliates have "an almost insuperable advantage ... in negotiations over retransmission rights." Id. at p. 7.



which they are the primary outlet.⁵ The public policy judgment reflected in the rules is not diminished by the Cable Act or by a particular station's election of must-carry or retransmission consent with respect to a cable system.⁶

Cablevision also overstates the extent of the perceived problem created by the exercise of network non-duplication rights in the context of retransmission consent. It claims that a network affiliate can use non-duplication rights "to prevent the carriage of any other more distant affiliate of the same network. Even another affiliate within

carried by another affiliate receives meaningful protection through the "significantly viewed" exception to the network non-duplication rules, since a cable system is not required to delete programming carried on local broadcast signals that fall into that category.⁸ This exception was included to ascribe a certain "local" status to broadcast signals that have met a stated over-the-air viewing standard in a cable community.⁹

Cablevision seeks to overturn network non-duplication rights for all broadcast stations on the basis that exercising those rights could result in an "anomalous" situation with respect to its two Connecticut cable systems. Its main complaint in this respect seems to be that viewers' "ability to view the programming, advertising and public service advertisements which they consider to be 'local' and the most relevant to their lives" will be curtailed.¹⁰ In short, Cablevision's complaint is based on the fact that its

⁸ 47 C.F.R. § 76.92(f).

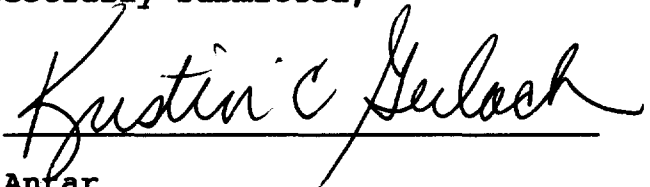
⁹ Memorandum Opinion and Order In the Matter of Amendment of Subpart F of Part 76 of the Commission's Rules and Regulations with Respect to Network Program Exclusivity Protection by Cable Television Systems, Petitions for Reconsideration, Docket No. 19995, RM-2275, 43 Rad. Reg. (P&F) 2d 1521 (rel. August 28, 1978) at paragraph 19. Although Cablevision mentions the "significantly viewed" exception, it diminishes the importance of the exception by relegating it to a footnote later in the argument.

¹⁰ Cablevision Petition at p. 6 (emphasis supplied). To the extent that Cablevision is arguing that cable viewers should have a continuing right to view network programming, this is a direct assault on the statutory decision to allow broadcasters to grant retransmission consent.

be strongly motivated to reach a mutually satisfactory arrangement. As NBC has previously pointed out, "the Congress intentionally created a situation where the station and the cable system can both gain from making an [retransmission consent] agreement and can both lose from not doing so."¹³ There is simply no reason to prejudge the outcome.

For the reasons set forth above, Cablevision's Petition for Reconsideration should be denied.

Respectfully submitted,

By: 

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June 4, 1993

¹³ NBC Reply Comments at 5.

CERTIFICATE OF SERVICE

I, Anne Kromm, hereby certify that on this 4th day of June, 1993, I caused a copy of the foregoing "Opposition to Cablevision Petition for Reconsideration" to be served by first-class United States mail, postage prepaid to:

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